

Settlement Agreement and Release

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB"), with its principal office at 1001 I Street, Sacramento, California 95814, and GENE ERICKSON TRUCKING, INC., PO Box 1179, Mount Shasta, CA 96067.

I. RECITALS

- (1) *California Health and Safety Code (H&SC) Section 44011.6* established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, Chapter 3.5, Sections 2180-2188, Title 13, California Code of Regulations (CCR).
- (2) *H&SC Section 43701* provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excess smoke emissions.
- (3) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC section 43701* and, with limited exceptions which are not applicable here, apply to all heavy-duty diesel-powered vehicles with gross vehicle ratings greater than 6,000 pounds which operate on the streets or highways within the State of California.
- (4) Title 13, CCR sections 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based truck fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds which operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.
- (5) Title 13, CCR section 2191(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."
- (6) *H&SC Section 43106* states, "Any person who violates any provision of this part, or any order, rule or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500) per vehicle."
- (7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

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- (8) GENE ERICKSON TRUCKING, INC. failed to test, measure, record and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles in 2009 and 2008 in violation of Title 13, CCR Sections 2190 et seq.
- (9) The ARB alleges that if the facts described in recital paragraphs (1)-(8) were proven, civil penalties could be imposed against GENE ERICKSON TRUCKING, INC. as provided in *H&SC Section 43016*.
- (10) GENE ERICKSON TRUCKING, INC. is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS & RELEASE

In consideration of ARB not filing a legal action against GENE ERICKSON TRUCKING, INC. for the violations alleged above, ARB and GENE ERICKSON TRUCKING, INC. agree as follows:

- (1) Upon execution of this agreement, GENE ERICKSON TRUCKING, INC. shall pay a civil penalty of six thousand dollars (\$6,000). Payment shall be made as described below and the full amount shall be submitted by **no later than January 15, 2011**.
 - \$4,500.00 by check submitted by January 15, 2011, made payable to the California Air Pollution Control Fund.
 - \$1,500.00 by check submitted by January 15, 2011, made payable to the Peralta Community College District.

All payments and documents shall be sent to the attention of:
Amy Ng
California Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

- (2) GENE ERICKSON TRUCKING, INC. shall not violate *H&SC Sections 43701 et seq. and 44011.6 et seq.* and Title 13, CCR Sections 2180 et. Seq., 2190 et seq., and 2485 et seq.
- (3) GENE ERICKSON TRUCKING, INC. shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET) class, as described on the ARB's webpage at <http://www.arb.ca.gov/enf/hdvp/hdvp.htm>. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP and HDVIP.
 - (a) GENE ERICKSON TRUCKING INC. shall have at least one staff member responsible for compliance with the PSIP and the HDVIP attend the CCDET class. Proof of CCDET completion shall be provided to ARB within one year of the date of this Agreement and

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shall be maintained in each applicable employee's file for the term of his or her employment, or as provided by GENE ERICKSON TRUCKING, INC. rules, regulations, codes, or ordinances, whichever is longer.

- (b) If GENE ERICKSON TRUCKING, INC. uses a contractor to perform the annual smoke opacity testing required under the PSIP, GENE ERICKSON TRUCKING, INC. shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET course within the past four years. This proof of CCDET completion shall be provided to ARB with PSIP records as required by this Settlement Agreement and shall be maintained with the annual PSIP records.
- (4) GENE ERICKSON TRUCKING, INC. shall submit copies of all PSIP compliance records for years: 2011, 2012, and 2013 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Ms. Amy Ng at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any GENE ERICKSON TRUCKING, INC. fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (5) GENE ERICSON TRUCKING, INC. shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California no later than 45 days after an engine requiring reflash to comply with ARB emission standards is identified or included in its fleet.
- (6) Each heavy-duty commercial vehicle in Gene Erickson's fleet operated in California shall have proof that its engine meets emissions standards at least as stringent as U.S. federal standards for its model-year by having a manufacturer's emission control label (ECL) properly affixed to the engine within 45 days of this agreement.
- (7) GENE ERICKSON TRUCKING, INC. shall instruct all employees who operate diesel-fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.
- (8) This Agreement shall apply to and be binding upon GENE ERICKSON TRUCKING, INC. and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (9) Now, therefore, in consideration of the payment by GENE ERICKSON TRUCKING, INC. in the amount of six thousand dollars (\$6,000), ARB hereby releases GENE ERICKSON TRUCKING, INC. and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) through (10) above. The undersigned represent that they have the authority to enter into this Agreement.

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- (10) This Agreement constitutes the entire agreement and understanding between ARB and GENE ERICKSON TRUCKING, INC. concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and GENE ERICKSON TRUCKING, INC. concerning the subject matter hereof.
- (11) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (12) Severability. Each provision of this Agreement is severable, and in the even that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (13) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code sections 42403 and 43024.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500 per vehicle per violation. The penalty obtained for the PSIP violations involved in this case is \$6,000 for 8 vehicles.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

PSIP Violations

The penalty provision being applied to the PSIP violations is Health and Safety Code section 43016 because GENE ERICKSON TRUCKING, INC. failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for years 2008 and 2009 in violation of the PSIP regulation in Title 13, CCR Sections 2190 et seq, for 8 vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the Health and Safety Code and since there is no specific penalty or fine provided for PSIP violations in Part 5, Health and Safety Code section 43016 is the applicable penalty provision.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

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The provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (14) GENE ERICKSON TRUCKING, INC. acknowledges that ARB has complied with SB 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (15) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. The penalty was based on the fact that the PSIP violations were first time violations and the violator made diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.
- (16) The penalty was based on confidential settlement communications between ARB and GENE ERICKSON TRUCKING, INC. that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and GENE ERICKSON TRUCKING, INC. and reflects ARB's assessment of the relative strength of its case against GENE ERICKSON TRUCKING, INC., the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that GENE ERICKSON TRUCKING, INC. may have secured from its actions.
- (17) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

California Air Resources Board

By: 

Name: James Ryden, Chief

Title: Enforcement Division

Date: 1-6-11

GENE ERICKSON TRUCKING, INC.

By: 

Name: Fred Erickson

Title: President

Date: 12/28/2010